



Office of the Attorney General
State of Texas

March 12, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Jesús Garza
Executive Director
Texas Water Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR93-074

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18212.

The Texas Water Commission (the "commission") has received a request for information relating to a certain leaking petroleum storage tank. You have submitted to us for review the commission's file regarding the leaking tank. In letters to the commission dated September 27, 1989, and January 15, 1990, representatives of the tank operator wrote that they expected "the Texas Water Commission to keep all information submitted [to the commission] confidential under Rule 26(b)(3) of the Federal Rules of Civil Procedure, the attorney work product, consulting expert, and investigative privileges under rule 166b.3. of the Texas Rules of Civil Procedure, and pursuant to sections 3(a)(1) and (13) of the Texas Open Records Act."

Rule 26(b)(3) of the Federal Rules of Civil Procedure and the consulting expert and investigative privileges under rule 166b.3 of the Texas Rules of Civil Procedure are discovery privileges. Section 3(a)(1) of the Open Records Act does not encompass investigative or "discovery privileges; such protection may exist under section 3(a)(3), the "litigation exception," if the situation meets the section 3(a)(3) requirements, or under section 3(a)(1), if so ordered by a court in a particular case. Open Records Decision No. 575 (1990). Neither is an attorney's work product protected as information deemed confidential under section 3(a)(1). Open Records Decision No. 574 (1990). Again, such information may be excepted from required public disclosure under section 3(a)(3) if the section 3(a)(3) requirements are met. *Id.* You have not claimed that the information submitted to us for review is excepted from required public disclosure by section 3(a)(3), nor have you indicated that it is made confidential by court order or any other source of law. Accordingly, we have no basis to conclude that the information submitted to us for review may be withheld under rule 26(b)(3) of the Federal Rules of Civil Procedure or rule 166b.3 of the Texas Rules of Civil Procedure.

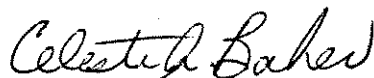
Next we consider whether the information submitted to us for review is excepted from required public disclosure by section 3(a)(13) of the Open Records Act. Section 3(a)(13) protects:

geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency or an electric log confidential under Subchapter M, Natural Resources Code.

V.T.C.S. art. 6252-17a, § 3(a)(13). Section 3(a)(13) protects the commercial value of geological and geophysical information. Open Records Decision No. 479 (1987). Section 3(a)(13) is modeled after exemption 9 of the federal Freedom of Information Act, 5 U.S.C. § 552(b), which was designed to protect from disclosure certain commercial information that is highly valuable to and that should be kept confidential when contained in governmental records. Open Records Decision No. 504 (1988) at 3 (copy enclosed). You have not demonstrated that the documents submitted to us for review meet the criteria for nondisclosure articulated for section 3(a)(13) in Open Records Decision No. 504. *See id.* at 4. Accordingly, we conclude that the requested information may not be withheld under section 3(a)(13) and must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-074.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Enclosure: Open Records Decision No. 504

Ref.: ID# 18212

cc: Mr. R. Keith Starek
Environmental Specialist
Terra-Mar
2679 Lombardy
Dallas, Texas 75220

Mr. J. Michael Hawthorne
Star Enterprise
4500 Fuller Drive
Irving, Texas 75038

Mr. Raymond C. Winter
Staff Attorney
Texas Water Commission
Legal Division
P.O. Box 13087
Austin, Texas 78711-3087